



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 9, 1997

Mr. Scott Durfee
General Counsel
Office of the District Attorney
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR97-2684

Dear Mr. Durfee:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111156.

The Harris County District Attorney's Office (the "district attorney") received an open records request for all records pertaining to nine specified offenses allegedly committed by the same individual. You state that all of the records pertaining to five of the referenced offenses have been destroyed in accordance with the district attorney's destruction policy due to the age of the cases. *See generally* Local Gov. Code § 203.041 *et seq.* (local government record retention schedules). You inform us that some of the existing records have been made available to the requestor. You seek to withhold, however, some of the existing documents pursuant to sections 552.101, 552.103, and 552.108(a)(3) of the Open Records Act.

Because you claim the protection of section 552.103 for all of the records at issue, we will discuss this exception first. Section 552.103(a) of the Government Code, known as the litigation exception, excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated

litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. You contend that section 552.103(a) excepts this material from required disclosure because the requestor has stated that he seeks the information in connection with a writ of habeas corpus he is filing on behalf of a third party. You have not explained, nor is it apparent to this office, how the requested records, which pertain to one individual, "relate" to the habeas corpus action of another. We therefore conclude that you have not met your burden in establishing the applicability of section 552.103 to the records at issue. Accordingly, the district attorney may not withhold any of the request records pursuant to this section.

We now address your specific arguments for Exhibit B, which you contend must be withheld pursuant to section 552.101 of the Government Code. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) We agree that the district attorney must withhold pursuant to statutory law all criminal history information obtained from the TCIC and NCIC. The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 (1990) at 10-12. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 (1990) at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F. The district attorney therefore must withhold any criminal history information obtained from the TCIC and NCIC pursuant to section 552.101 of the Government Code.

You also assert that certain pieces of correspondence from the district attorney to the Texas Department of Criminal Justice are confidential pursuant to section 18(a) of article 42.18 of the Code of Criminal Procedure. Section 18(a) provides:

Except as provided by Subsection (b), all information, including victim protest letters or other correspondence, victim impact statements, lists of inmates eligible for release on parole, and arrest records of inmates, obtained and maintained in connection with inmates of the institutional division subject to parole, release to mandatory supervision, or executive clemency, or individuals who may be on mandatory supervision or parole and under the supervision of the pardons and paroles division, or persons directly identified in any proposed plan of release for a prisoner, is confidential and privileged.

This provision accords confidentiality to the records of the Pardons and Paroles Division of the Texas Department of Criminal Justice. Open Records Decision No. 190 (1978) at 2; *see also* Attorney General Opinion H-427 (1974); Open Records Decision No. 33 (1974). It does not, however, make confidential records in the custody of the district attorney. Because you have raised no other exception to required public disclosure with regard to these documents, they must be disclosed.¹

Finally, we address whether the contents of Exhibit A are excepted from public disclosure pursuant to section 552.108(a)(3) of the Government Code, which, as amended by the Seventy-fifth Legislature, excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.” You seek to withhold pursuant to section 552.108(a)(3) the contents of Exhibit A, which consists of certain documents you characterize as “work product,” specifically, cover sheets for the prosecutor’s litigation files, hand written notes pertaining to particular offenses, drafts of subpoenas, drafts of reports submitted to the Texas Department of Criminal Justice (discussed above), and “central intake screening reports.”

We agree that most of the documents contained in Exhibit A may be withheld from the public pursuant to section 552.108(a)(3).² The central intake field reports, however, consist primarily of the types of “basic information about an arrested person, an arrest, or a crime” that is not protected from public disclosure under this section. Gov’t Code § 552.108(c). Unless the district attorney has released all of the “basic information” about the offenses to the requestor, including a *detailed* description of the offenses, the district attorney must release the intake screening reports documents to the extent that they contain “basic information” about the offenses, in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). The remaining information in the “central intake field reports” may be withheld pursuant to section 552.108(a)(3).

¹You have also submitted as part of Exhibit B a copy of a telephone message slip. You have not explained, nor is it apparent to this office, that this record is excepted from public disclosure under section 552.101. Consequently, this record must be released.

²One of the documents you submitted to this office is a printout of the driving record of the criminal defendant, which also contains handwritten notations. Because you do not specifically argue that this entire document is excepted from public disclosure, we conclude that the district attorney may withhold only the handwritten notes pursuant to section 552.108(a)(3).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/RWP/ch

Ref.: ID# 111156

Enclosures: Submitted documents

cc: Mr. Gregory W. Wiercioch
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(w/o enclosures)